AILET

Introduction to the Indian Contract Act, 1872 for CLAT

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The Indian Contract Act was enacted in 1872 and came into force on 1st September 1872. The word ‘contract’ has been derived from the Latin word *‘contructus’* which means ‘to work on contract’. The law of contract is based on the principle of *‘pacta sunt servanda’* which means ‘agreements must be kept’.

Section 2(h) of the Indian Contract Act 1872 defines the term ‘contract’ as an ‘agreement enforceable by law’. As per section 2(e) every promise and every set of promises forming consideration for each other is called an agreement. A promise is an accepted proposal.

An agreement becomes a valid contract when the following essential conditions are satisfied:

1. Offer and acceptance
2. Intention to create legal obligations
3. Lawful consideration
4. Contractual capacity
5. Free consent
6. Lawful object
7. Must not be expressly declared as void
8. Certain terms of the contract
9. Legal formalities

TYPES OF CONTRACT

Contracts may be classified on the basis of enforce-ability, mode of creation, extent of execution or the form of the contract as follows:

- Contracts on the basis of enforce-ability: a contract on the basis of enforce-ability can be of the following kind:

1. Valid contract
2. Voidable contracts
3. Void agreement
4. Unenforceable contract
5. Illegal agreement

- Contract on the basis of mode of creation: a contract on the basis of mode of creation can be of the following kind:

1. Express contract
2. Implied contracts
3. Quasi contract

- Contract on the basis of extent of execution: a contract on the basis of extent of execution can be of the following kind:

1. Executed contracts
2. Executory contract
3. Unilateral contract
4. Bilateral contract

- Contract on the basis of form: a contract on the basis of form can be of the following kind:

1. Ordinary contract
2. Standard contract



OFFER

Section 2(a) of the Indian Contract Act 1872 defines proposal as ‘When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal’.

As per section 2(a) an offer or proposal has the following essential ingredients:

1. One person signifies to another

2. His willingness to do or to abstain from anything
3. With a view to obtain an assent thereto

The person who makes the proposal or offer is called the promisor or offeror and the person on whom the proposal is made is called the promisee or offeree.

Following are the essential conditions for a valid offer:

1. Intention to create legal obligation
2. Express or implied
3. Certainty of terms
4. Silence as acceptance
5. Expression of willingness to do or to abstain from anything
6. General or specific: there are two kinds of offers viz. general and specific. A specific offer is made to a specific person or specific group of persons and it can be accepted only by the person(s) to whom it is made. A general offer is made to public or world at large and it can be accepted by a definite person who comes forward and performs the requisite conditions. However, the communication of acceptance is not necessary in such cases.
7. Offer must be communicated: communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. This may be express or implied.
8. Cross offers: when two parties make identical offers to each other, in ignorance of each other's offer, the offers are termed as 'cross offers'. Such offers do not constitute acceptance of one's offer by the other thus they do not lead to a completed agreement.
9. Invitation to offer: in a valid offer there is an expression of willingness to do or abstain from doing an act with a view of obtaining assent from the other while in case of invitation of offer a party without expressing his final willingness proposes certain terms on which he is willing to negotiate. There in an invitation to offer the party does not make an offer but invites the other party to make an offer on those terms.
10. Special terms and conditions: the special terms and conditions of the contract must be specifically communicated to the party in order to make him bound by the same.

ACCEPTANCE

Section 2(b) of the Indian Contract Act 1872 defines acceptance as 'When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise'.

Following are the essential requirements of a valid acceptance:

1. Oferee must signify his assent or communicate the acceptance. Acceptance may be in the form of express words written or spoken or may be signified through conduct i.e. implied.
2. Acceptance must be specifically communicated to the offeror himself or his authorized agent
3. The communication of acceptance should be from a person who has the authority to accept.
4. Acceptance must be made in the manner prescribed by the offeror. Where no mode of acceptance is prescribed it must be made within a reasonable time and manner
5. To convert a proposal into a promise the acceptance must be absolute and unqualified i.e. without any qualification and condition.

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The communication of acceptance is complete against the proposer when it is put in course of transmission to him, so as to be out of the power of the acceptor. The communication of acceptance against the acceptor gets complete when the proposer comes to know about the acceptance. A proposal may be revoked at any time before the communication of acceptance is complete as against the proposer but not afterwards. Communication of revocation is complete against the person who makes it when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it. The communication of revocation is complete against the person to whom it is made when it comes to his knowledge.

Place of acceptance- When the contract is made through post the place of contract shall be the place of acceptance i.e. from where the letter of acceptance is posted. The place of contract in case of a contract on phone shall be where the acceptance is heard. The communication through e-mail shall follow the same rules as that of communication through post.

CONSIDERATION

Section 2(d) of the Indian Contract Act 1872 defines consideration as *'When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains*

from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise'

Consideration is a cardinal necessity of the formation of a contract, but no consideration is required for the discharge or modification of contract. It is the price of a promise. Consideration may be present, past or future. Forbearance to sue constitutes a valid consideration provided the plaintiff has a bona-fide belief that he has a reasonably good claim against the defendant.

Under the following situations an agreement made without consideration shall not be void:

- Natural love and affection
- Past voluntary service
- Time barred debt
- Absence of consideration shall not affect the validity of a gift
- No consideration is necessary to create agency.

Privity of contract

The doctrine of 'privity of contract' means that a contract is a contract only between the parties and no third person can sue upon it i.e. a stranger to a contract cannot sue. Following are the exceptions to the rule of privity of contract:

- Beneficiaries under trust or charge
- Marriage and family arrangement
- Acknowledgement or estoppel
- Undisclosed principal has the right to sue a third party subject to the rights and obligations subsisting between the third party and agent.
- The assignee of insurance policy is entitled to sue on the contract made between the insurer and insured.

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